

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOWELL B. SMITH,)	
DONALD G. DOWDEN,)	
EDDIE JAMES BROWN, JR.,)	
MELVIN GENE FOREE,)	
JARED ALLEN MICHAEL PARTON,)	
DANIEL L. ROBBINS,)	
SEAN GARRET GRIFFITH,)	
SEAN ROBERTS,)	
JADEN L. BALLARD,)	
RANDY HAKIM WILSON,)	
ANTON LAMONT THOMPSON,)	
JARED EVANS,)	
DAVID COPP,)	
KENNETH COLE SIDWELL,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:18-cv-02255-TWP-DLP
)	
MATT MYERS,)	
BOOTH,)	
)	
Defendants.)	

**Entry Resolving Pending Motions, Dismissing Action
and Directing Entry of Final Judgment**

The plaintiffs are a group of 14 inmates who were incarcerated at the Bartholomew County Jail for a period of time. The plaintiffs joined together to file this civil action against Sheriff Matt Myers and Officer Booth. According to the Complaint, on July 18, 2018, the plaintiffs were allegedly subjected to Officer Booth's inappropriate and unprofessional conduct. Specifically, when Officer Booth was returning clean laundry to the housing unit, some inmates complained that their laundry had not been picked up for cleaning earlier in the morning. In response, Officer Booth allegedly stated:

I don't know how you didn't hear me because I've got a big f***ing mouth and I hollered five or six different times. I've also got a big f***ing dick. Do you want to see?

Dkt. 1. Then the officer allegedly grabbed his penis. For the reasons explained in the Entry of July 30, 2018, the complaint was dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A. Dkt. 4. The plaintiffs were given a period of time in which to show cause why Judgment should not enter and to pay the filing fee or seek leave to proceed in forma pauperis. That deadline has now passed.

I. Plaintiff Randy Hakim Wilson

Plaintiff Randy Hakim Wilson filed a motion to proceed in this case on August 17, 2018 (signed August 15, 2018). Less than a week later, Mr. Wilson filed a Motion to Withdraw. Accordingly, the motion to withdraw, dkt [19], is **granted** and the motion to proceed, dkt [13], is **denied as moot**.

II. Plaintiff Lowell B. Smith

Plaintiff Lowell B. Smith was granted leave to proceed without the prepayment of the filing fee. Dkt. 10. Thus, his subsequent motion for leave to proceed *in forma pauperis*, dkt [28], is **denied as moot**.

Mr. Smith's three motions for time to file an amended complaint to add Jail Commander Martoccia as a defendant to this case and "stating the same facts" raised in the original complaint, dkts [17], [18] and [22], are **granted**. The amended complaint filed on August 29, 2018, has been considered.

The amended complaint is based on the same facts as the original complaint and names Jail Commander Martoccia, Sheriff Matt Myers and Special Deputy Officer Booth as defendants. The amended complaint is dismissed for the same reason as the original complaint. That is, the facts alleged are insufficient to state a federal claim for relief and adding additional defendants

does not change that outcome. In addition, Mr. Smith has two other actions already pending: *Smith v. Martoccia, et al.*, 1:18-cv-2319-JMS-MJD (filed July 30, 2018) and *Smith v. Martoccia, et al.*, 1:18-cv-2355-RLY-TAB (filed August 1, 2018). To the extent there is viable claim that can be alleged against Jail Commander Martoccia, it may be raised in one of Mr. Smith's other pending actions.

The amended complaint filed on August 29, 2018, is dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A.

III. Remaining Plaintiffs

The **clerk is directed** to update the docket to reflect that Lowell B. Smith is the only plaintiff remaining in this action. All other plaintiffs have voluntarily abandoned this action. See dkt. 4 at p. 4.

The **clerk is further directed** to update the docket to reflect Mr. Smith's mailing address consistent with the distribution portion of this Entry.

IV. Summary

This action brought by Mr. Smith against Jail Commander Martoccia, Sheriff Matt Myers and Special Deputy Officer Booth based on Officer Booth's unprofessional comments on July 18, 2018, is **dismissed** pursuant to 28 U.S.C. § 1915A and Judgment consistent with this Entry shall now issue.

Mr. Smith's motions to amend, dkt [17], [18], and [22] are **granted**. Mr. Wilson's motion to dismiss, dkt [19], is **granted**. Mr. Wilson's motion to proceed, dkt [13], and Mr. Smith's motion for leave to proceed *in forma pauperis*, dkt [28], is **denied as moot**.

The **clerk shall terminate** all plaintiffs except Lowell B. Smith on the docket.

IT IS SO ORDERED.

Date: 9/12/2018



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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DOC # 251281
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
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